



<i>Amusement Machine</i>	any amusement, amusement with prizes or gaming machine or equipment or audio or visual reproduction or projection apparatus or equipment or other automatic, mechanical, electrical or electronic machine, apparatus or equipment other than for exclusive domestic use by the Tenant and his family. Without limiting the generality of the foregoing the expression includes skill with prize machines, pool, billiards, bar billiards and snooker tables, pin tables, juke boxes and video equipment with or without prizes (and whether or not such machines or equipment fall within the provisions of the Gaming Act 1968 or any Act amending or replacing that Act) and mechanical and electronic vending apparatus (including for the provision of mobile telephone "top up" services) automated teller machines (for the provision of cash and/or other financial services and/or information) and equipment providing facilities for public internet access;
<i>Annual Rent</i>	the initial Annual Rent specified in the Particulars increased as provided in clause 4 of this Agreement;
<i>Beer</i>	beer of any type including any ale, lager, stout, low carbohydrate or low alcohol or alcohol free ale or lager (and also including cider) produced by a process of fermentation and whether in draught or packaged form;
<i>Beers of a different type</i>	beers which are clearly distinguishable by their composition, appearance or taste;
<i>Business</i>	the business of running a McMullen public house on the Premises;
<i>Business Plan</i>	the plan for the operation of the Business as

agreed between the Company and the Tenant but as varied (as provided for in this Agreement) a copy of which is annexed;

*Company*

McMullen & Sons, Limited and its successors and assigns;

*Company's current standard Licensees trade price lists*

the price lists of the time being of the Company and (where applicable) its Nominated Suppliers for Beers and Liquors supplied by the Company and/or its Nominated Suppliers for the Beers and Liquors which the Company offers to supply to tenants of its public houses;

*Company's fixtures and fittings*

all fixtures and fittings at the date of this Agreement or during the Term annexed to or forming part of or in the Premises and which do not form part of the Tenant's Inventory or of the Tenant's private domestic furniture and household effects. Without limiting the generality of the foregoing the expression includes all service systems including electrical systems and all water, ventilation, sanitary, cooling and central heating plant, equipment and apparatus (if any) and all other fixtures and fittings in or at the Premises normally designated Company's fixtures and fittings;

*Conducting Media*

the sewers, drains, gutters, pipes, wires, cables and conduits in or about the Premises;

*Core Trading Hours*

the hours per day specified in the Particulars (or such alternative hours as the Company may from time to time stipulate and notify in writing to the Tenant);

*Date of Commencement*

*Deposit*

the initial Deposit (as specified in the Particulars) paid to the Company on the making

of this Agreement as reviewed by the Company from time to time as provided in clause 11.4;

*designated Beers*

Beers of the types listed in Schedule 3, Part 4, Section 1 which are manufactured or factored by the Company;

*designated Liquors*

the Liquors listed in Schedule 3, Part 4, Section 1;

*Index*

the UK Retail Prices Index compiled by the Office for National Statistics or any successor Ministry or Department or other government body or executive agency [but:

- (a) if the reference base used to compile the Index changes the figure taken to be shown in the Index after the change will be the figure which would have been shown in the reference base current at the date of this Agreement had been retained;
- (b) if it becomes impossible by reason of any change in the method used to compile the Index (or for any other reason) to calculate the revised Rent by reference to the Index the parties shall seek to agree a suitable alternative index or other basis for calculation and in default the difference shall be referred to the determination of an independent expert who shall be a Fellow of the Royal Institution of Chartered Surveyors and whose identity is to be agreed upon by the parties or failing agreement to be a person nominated by the President for the time being of

the Royal Institution of Chartered Surveyors (on the application of either party or both parties)];

*Insurance Rent*

all sums (without deduction of discount or commission received by the Company) paid or payable by the Company (including for the avoidance of doubt payable in circumstances contemplated by paragraph 4.5 of Schedule 2 Part 1 and/or as a result of breach by the Tenant of paragraph 4.4 of Schedule 2 Part 1) in effecting and maintaining cover against:

- (a) Insured Risks;
- (b) two years' loss of rent;
- (c) such professional fees as may be incurred in connection with rebuilding or reinstatement of the Premises;
- (d) the cost of demolition shoring up and site clearance works;
- (e) loss of Premises Licence; and
- (f) value added tax liability on all or any of the above items;

*Insured Risks*

loss or damage by fire, lightning, explosion, earthquake, riot, civil commotion, malicious damage, aircraft and articles dropped therefrom, impact, storm, flood, burst pipes and theft but including whilst actually insured against any other risk not referred to above but which the Company in its discretion from time to time insures;

*Liquor*

any drink which is of a type specified in Schedule 3 Part 4 Section 2;

<i>Liquor of a different type</i>	Liquors which are clearly distinguishable by their composition, appearance or taste;
<i>Nominated Suppliers</i>	such undertakings entrusted by the Company with the distribution and/or supply of goods to the Company's tenants as the Company may nominate from time to time;
<i>Particulars</i>	the details and descriptions contained under the heading "Particulars";
<i>Percentage</i>	the percentage representing the trading opportunity at the Premises as indicated in the Particulars;
<i>Personal Licence</i>	the personal licence required (in accordance with the Licensing Act 2003) to permit the Tenant lawfully to sell alcohol (subject to a Premises Licence being and remaining in existence);
<i>Planning Acts</i>	"the consolidating Acts" as defined in the Planning (Consequential Provisions) Act 1990 and any other legislation relating to town and country planning in force from time to time;
<i>Premises</i>	the premises details of which are specified in the Particulars including each and every part thereof and all additions thereto and including the Company's fixtures and fittings;
<i>Premises Licence</i>	the premises licence required in accordance with the Licensing Act 2003 permitting the Premises to be used for the purposes of the sale of alcohol and the carrying on of the Business from the Premises;
<i>Principal Products</i>	the products specified by the Company in Schedule 3, Part 5;

<i>Relevant Authority</i>	the local or other authority that shall from time to time have responsibility for the issue and variation of Licences and the Premises Licence in respect of the Premises;
<i>Relevant Offence</i>	any offence falling within Schedule 4 of the Licensing Act 2003;
<i>Rent Increase Dates</i>	each anniversary of the Date of Commencement of the Term;
<i>Reserved Rights</i>	the rights excepted and reserved to the Company in respect of the Premises as set out in Schedule 1;
<i>Residential Area</i>	the part of the Premises occupied (or intended to be occupied) for residential purposes and not for the conduct of the Business;
<i>Service Retailing Standards</i>	the service retailing standards set out in Schedule 3, Part 3;
<i>Stipulated Rate</i>	3% per annum above the base lending rate of the time being of National Westminster Bank Plc;
<i>Tenant</i>	the Tenant specified in the Particulars;
<i>Tenant's Inventory</i>	such trade fixtures and fittings, articles and effects as the Company considers necessary for the Business and which are customarily in the case of the Company's tenants taken and paid for (or to be taken and paid for, as the context may require) by the Tenant on entering as specified in an inventory approved by the Company and signed or intended to be signed by or on behalf of the Tenant and any like articles added or substituted with the written consent of the Company;

<i>Term</i>	the term of years granted by the Agreement;
<i>Third Party Property</i>	such fixtures and fittings, equipment, articles and effects as may from time to time be supplied to the Tenant for use in connection with the Business by a Third Party (which expression shall exclude the Company) and in respect of which there is documentary proof that such property is owned by a Third Party and has been supplied to the Tenant (whether on lease or hire or loan or on some other terms) with the written consent on the Company;
<i>Trade Rooms</i>	<p>(a) such interior parts of the Premises as consist of bars, bar serveries, toilets for use by customers and all doorways, entrances, porches, hallways and corridors used by customers to gain access to the bars and toilets; and</p> <p>(b) such meeting rooms, letting bedrooms, dining areas for use by customers, kitchens or other parts of the Premises (if any) as the Company may from time to time in writing designate as Trade Rooms;</p>
<i>Trading Rent</i>	the amount from time to time unpaid and due to the Company in respect of goods or services actually supplied to the Tenant by the Company and/or any Nominated Supplier or in respect of goods or services for which the Tenant shall have been liable to pay but for which payments shall have been made by the Company and/or any Nominated Supplier on the Tenant's behalf and whether or not such payment shall have been expressed to have been made on the

Tenant's behalf; and

*Working day*

any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a Statutory Bank Holiday.

- 1.2 For the purposes of this Agreement:
- 1.2.1 Covenants, obligations and agreements made by or binding on any party that for the time being comprises two or more persons shall be binding on those persons jointly and severally.
- 1.2.2 Every agreement or obligation of the Tenant not to do any act or thing and every agreement or obligation of the Tenant to do any act or thing shall be read as though those agreements and obligations respectively include agreements and obligations on the part of the Tenant in the first case not to permit or allow that act or thing to be done and in the second case to procure that act or thing to be done.
- 1.2.3 Any reference to any Act of Parliament or section of any Act of Parliament shall be deemed to include a reference to that Act as from time to time amended and to any Act for the time being in force replacing the same or of like nature or effect and to the relevant section or sections of such Act.
- 1.2.4 Any reference to any Act of Parliament shall include any order, regulation, instrument, direction, scheme, plan, condition or permission made or issued under it or deriving validity from it.
- 1.2.5 Apportionments shall be made in respect of any payments or obligations for part of a period where the amount of the payment or the extent of the obligation is specified in relation to the whole period.
- 1.2.6 Where the Company is entitled to nominate or specify any person or thing it shall be entitled to change its nomination or specification.
- 1.2.7 If for any reason it becomes in the opinion of the Company inappropriate or impossible to refer to any criterion by which any matter or sum is directed to be determined in this Agreement or the Business Agreement then the nearest equivalent criterion as determined by the Company shall be substituted.
- 1.2.8 Where the Company has the right or obligation to serve a notice, demand or certificate or to enter in the Premises for any purpose such right or obligation may

be exercised by any person authorised by the Company to act on the Company's behalf (in case of entry) if appropriate with workmen, materials and equipment.

- 1.2.9 No relaxation or indulgence which either party may from time to time extend to the other shall in any way prejudice or act as a waiver of that party's rights hereunder.
- 1.2.10 Any notice to be given to the Tenant shall be sufficiently given if sent to the Tenant by recorded delivery post properly addressed in a prepaid envelope or left at the Premises and any notice to be given to the Company shall be sufficiently given if sent by recorded delivery post to the Company's registered office properly addressed in a prepaid envelope.
- 1.2.11 Words importing the masculine gender only shall include the feminine gender and words importing the singular number only shall include the plural number and vice versa.
- 1.2.12 The clause headings shall be disregarded in the interpretation of the provisions of this Agreement and the Business Agreement.

## **2 Grant and reservations**

In consideration of the rents and covenants by the Tenant reserved and contained in this Agreement the Company demises to the Tenant the Premises together with the Appurtenant Rights excepting and reserving the Reserved Rights and subject to the Matters to hold to the Tenant for the Term paying to the Company the Annual Rent the Trading Rent (and any other sums payable under this Agreement) without deduction on the due dates.

## **3 Rent**

- 3.1 The Annual Rent shall be due and payable by the Tenant (whether lawfully demanded or not) in advance by equal monthly instalments on the first day of each month by direct debit the first such payment (or a proportionate part) to be made on the date of this Agreement and to be in respect of the period from the Date of Commencement to (and including) the last date of the month then current.
- 3.2 By way of further or additional rent the Tenant shall pay on demand the Trading Rent (if any) from time to time due and payable to the Company.
- 3.3 By way of further or additional rent the Tenant shall pay on demand the Insurance Rent.

#### 4 **Rent Increase**

On each of the Rent Increase Dates the Annual Rent payable by the Tenant in respect of the Premises shall be reviewed as set out below that is to say with effect from each of the Rent Increase Dates the Annual Rent is to be the higher of:

- 4.1 the Annual Rent payable immediately prior to the relevant Rent Increase Date; and
- 4.2 the figure which is the result of application of the two following formulae:

firstly  $A \times \frac{C}{B}$

secondly  $D + E$

where:

- A is the Annual Rent reserved under this agreement immediately prior to the relevant review date; and
- B is the Index figure last published before the commencement of the Term (in respect of the first Rent Increase Date) and last published before the preceding Rent Increase Date (in respect of the second and any subsequent Rent Increase Date);
- C is the Index figure last published before the relevant Rent Increase Date;
- D is the result of the application of the first formula; and
- E is a sum equal to the Percentage of A (being the percentage referred to in paragraph 7 of the Particulars and defined in clause 1.1).

#### 5 **Tenant's obligations**

The Tenant covenants with the Company:

- 5.1 to pay the rents made payable under this Agreement on the due dates and in the manner aforesaid without any deduction, counter claim or set off and to comply in all respects with the tenancy covenants on his part set out in Parts 1 and 2 of Schedule 2 and the Business covenants on its part set out in Schedule 3 and also to comply with all the obligations (if any) to which the Company may be subject in respect of its interest in the Premises and of which the Tenant has notification;

5.2 to comply with all reasonable directions of the Company as to the Premises or the conduct or standard of the business at the Premises; and

5.3 within 14 days of receipt thereof from the Company to execute such deeds or documents as the Company may reasonably require from time to time to give effect to any amendment or variation of the provisions of this Agreement which may be necessary at any time to bring this Agreement within the exemption granted by Commission Regulation (EEC) 2790/99 or any Regulation amending or replacing that Regulation as interpreted by the European Commission, the Court of Justice, the Court of First Instance, the Office of Fair Trading, Competition Appeal Tribunal and/or the UK Courts.

## 6 **Company's covenants**

The Company covenants with the Tenant:

### 6.1 **Quiet enjoyment**

That the Tenant paying the rents hereinbefore reserved and performing and observing the terms and conditions on his part contained in this Agreement shall quietly hold and enjoy the Premises for the Term without any lawful interruption from the Company or any person lawfully claiming through under or in trust for it.

### 6.2 **Compliance with Schedule 3 obligations**

To comply with its obligations in Schedule 3 Part 1 and Schedule 2 Part 3.

### 6.3 **Company's obligations to insure and reinstate**

6.3.1 The Company will keep the Premises insured with an insurer of repute against Insured Risks for the full cost of reinstatement, subject to such uninsured excess as the insurer may reasonably and properly apply.

6.3.2 Following damage to or destruction of the Premises by an Insured Risk, the Company will diligently apply, or procure the application of, the proceeds of the insurance covering reinstatement and rebuilding costs for those purposes and shall also apply any monies paid by the Tenant under paragraph 4.6 of Schedule 2 Part 1 provided that:

6.3.2.1 the obligations of the Company in clause 6.3.1 do not apply:

- (a) if the Company is unable, after using its reasonable endeavours to do so, to obtain any requisite planning permission or other consents for the reinstatement or rebuilding of the Premises or of a building of similar size, character and amenity;
- (b) if the Company's insurance is vitiated by reason of an act or omission of the Tenant, persons occupying or enjoying the use of the Premises through or under the Tenant, or their respective employees, workmen, agents or visitors unless and until the Tenant has paid all sums due from it under paragraph 4.6 of Schedule 2 Part 1; and
- (c) if this Agreement is, or is to be, determined under clause 10; and

6.3.2.2 where the Premises are substantially damaged or destroyed, the Tenant may not object to the reinstatement or rebuilding of the Premises in a form which is not identical to the Premises immediately before the damage or destruction occurred, if the Premises as reinstated or rebuilt are of at least an equivalent or similar standard and afford amenities which are not inferior to or deficient from those enjoyed by the Tenant before the damage or destruction.

#### 6.4 **Amusement Machines**

The Company will:

- 6.4.1 pay all such Excise Duty, value added tax and leasing, rental, hire and/or other costs due to suppliers in respect of any Amusement Machines in the Premises at the date of this Agreement or which are subsequently installed by the Company (in accordance with the provisions of paragraph 8.1 of Schedule 2, Part 1 of this Agreement);
- 6.4.2 pay to the Tenant (where this is a positive figure) one half the difference between the aggregate income derived by the Company from any Amusement Machines referred to in clause 6.4.1 (but not any installed by the Tenant in accordance with paragraph 8.2 of Schedule 2, Part 1 of this Agreement) and the aggregate of the

expenditure incurred by the Company (including any irrecoverable value added tax) in performing its obligations under clause 6.4.1;

6.4.3 the Company will provide to the Tenant (as soon as practicable on each occasion) a copy of its calculations of the amount due to the Tenant under clause 6.4.2 accompanied by copies of the relevant invoices, receipts and other records as necessary to enable the Tenant to be satisfied as to the sums due to it from time to time in this respect.

## **7 Termination by notice**

7.1 The Company may terminate this Agreement by serving on the Tenant notice in writing to that effect to expire at any time such notice to be:

7.1.1 not less than 26 weeks nor more than 27 weeks where such notice is served within the first two years of the Term; and

7.1.2 not less than 52 weeks nor more than 53 weeks where such notice is served after the expiration of the first two years of the Term.

7.2 The Tenant may terminate this Agreement at any time by serving on the Company notice in writing to that effect to expire at any time such notice to be not less than 52 weeks nor more than 53 weeks.

7.3 Immediately upon the expiration of such notice the tenancy hereby created shall determine but without prejudice to the remedies of either party against the other in respect of any prior claim.

## **8 Termination on death of Tenant**

If the Tenant should die during the Term then at any time thereafter:

8.1 The Company will be entitled to determine this Agreement by giving not less than one calendar month's notice in writing addressed to the personal representatives of the Tenant (without naming them) at the Premises and/or the president of the Family Division of the High Court of Justice and whether or not at that time any grant of probate or letters of administration to the Tenant's estate has been taken out provided that if the Tenant leaves a surviving spouse living with him at the Premises at his death then the minimum notice shall be extended (where requisite) so as not to expire earlier than three calendar months after the date of the Tenant's death.

8.2 The personal representatives of the deceased Tenant shall be entitled to determine this Agreement by not less than four nor more than five weeks notice to the Company.

## 9 **Termination and forfeiture on default**

9.1 This Agreement may be determined by not less than one calendar month's previous notice in writing given by the Company to the Tenant expiring at any time on any day whatsoever but without prejudice to the rights of the Company in respect of any then subsisting or later arising claim upon the happening of any of the following events:

9.1.1 if the Tenant becomes disqualified from holding a Licence or (as the case may be) a Personal Licence;

9.1.2 if the Company's interest in the Premises shall terminate or be terminated; or

9.1.3 if a notice to treat whether actual or deemed be served on the Company in respect of the Premises with a view to the compulsory acquisition of the Company's interest in the Premises provided that the Tenant shall thereafter continue to occupy and trade from the Premises as a tenant at will only but otherwise on the same terms as this Agreement and the Business Agreement.

9.2 In any of the events set out in clause 9.2.2 the Company may (as the Company may in its discretion consider appropriate):

9.2.1 terminate this Agreement by giving to the Tenant not less than three calendar months' notice in writing expiring at any time on any day whatsoever; or

9.2.2 re-enter upon the Premises or any part thereof and in the name of the whole forfeit this Agreement;

whereupon in either case this Agreement shall absolutely determine but without prejudice to the rights of the Company in respect of any prior claim.

9.2.3 The events referred to above are as follows:

9.2.3.1 if the Tenant fails to perform and observe any of the obligations imposed on him by this Agreement or fails to remedy any breach of the terms thereof (within a reasonable period after such breach has been brought to his attention by the Company in those cases where the breach is capable of being remedied);

- 9.2.3.2 if the Tenant does not pay any of the rents reserved by this Agreement or any part of them within 14 days after they have become due whether lawfully demanded or not or does not pay any Trading Rent on demand;
- 9.2.3.3 if the Tenant shall have a petition for bankruptcy issued against him or shall make any arrangement or composition with his creditors or shall suffer any distress or execution to be levied on the Tenant's goods (whether by the Company or others) or if judgment is given against him for a debt or if the Tenant gives a Bill of Sale or preferential security or creates a lien in contravention of paragraph 10 of Part 1 of Schedule 1;
- 9.2.3.4 if the Tenant abandons or ceases to trade on the Premises without reasonable excuse and without written notification to the Company;
- 9.2.3.5 if the Tenant fails at any time to open the Premises for business throughout the Core Business Hours without good cause;
- 9.2.3.6 if the Tenant repeatedly causes notices requiring correction to be served under the terms of this Agreement;
- 9.2.3.7 if the Tenant becomes in the Company's opinion incapable from mental or physical disability or infirmity or for some other reason of running the Business or managing his affairs;
- 9.2.3.8 if the Tenant is imprisoned or is convicted of any Relevant Offence or is convicted of any other criminal offence which in the reasonable opinion of the Company renders him unfit to run the Business; or
- 9.2.3.9 if the Tenant refuses the Company entry (to which it is entitled).

## 10 **Termination in case of substantial destruction or disrepair**

In the event that the whole or a substantial part of the Premises is destroyed or damaged whether by fire or otherwise or if the structure, roof, main walls, timbers or foundations of the Premises are in such a state of disrepair that the Company considers that it is not viable commercially to put the Premises into repair or if the Company shall be prevented from repairing the Premises for any reason outside its control then the Company may at its option in place of reinstatement elect to determine this Agreement by serving on the Tenant not less than three nor more

than four calendar months' notice in writing expiring at any time on any day whatsoever and on the expiration of such notice this Agreement shall cease but without prejudice to the rights and remedies of either party in respect of any prior breach of their obligations.

## 11 **Agreements and declarations**

### 11.1 **Reduction of rent for fire, etc**

In the event of the Premises being destroyed or so damaged by any Insured Risk so as to render it necessary to suspend trade then:

11.1.1 (unless payment of the insurance monies under the insurance policies (if any) effected by the Company is refused in whole or in part because of the act or default of the Tenant or his employees agents or invitees) during the period from the date of such destruction or damage until the Premises are reinstated or the Agreement is terminated the Annual Rent or a fair proportion of it if there is only partial damage will not be payable; and

11.1.2 no other reduction or rebate shall be made in the Annual Rent by reason of the Premises being damaged and the Company shall not be obliged to reinstate in accordance with the plans, sections, elevations and specifications of the existing buildings, but so far as is reasonably practicable the Company will provide the Tenant with accommodation reasonably equivalent to that now existing.

### 11.2 **Provisions as to forfeiture**

The provisions of Section 146 of the Law of Property Act 1925 with regard to restrictions on and relief against forfeiture of this Agreement shall apply. However the Company shall be entitled to apply to the court for the appointment of a receiver and manager before any notice has been given to the Tenant under that Section if the Company is entitled to re-enter the Premises by reason of a breach of this Agreement by the Tenant.

### 11.3 **Possession**

If the Company shall take any proceedings against the Tenant for recovery of possession of the Premises it shall nevertheless be lawful for the Company (if it shall think fit to do so) to continue both itself or through its Nominated Suppliers to supply the Tenant with Beer and Liquor in accordance with schedule 3 Part 1 and such supply shall not constitute a waiver of the Company's right to possession of

the Premises or any bar to the recovery from the Tenant of the cost of such Beer and Liquor so supplied to the Premises during his occupation thereof.

#### 11.4 **Deposit**

- 11.4.1 The initial Deposit having been paid by the Tenant to the Company on the date of this Agreement, the amount of the Deposit shall be reviewed by the Company whenever the rent of the Premises is increased and if in the opinion of the Company the Deposit held by the Company immediately prior to such date of review shall be insufficient the Tenant shall pay to the Company the amount of the shortfall and any sum due to be paid by the Tenant under this clause shall be paid either as a lump sum on the relevant Rent Increase Date (or (if later) within three working days after notification to the Tenant of the revised Deposit Sum) or by instalments over a period of one year or more thereafter if the Company shall so agree.
- 11.4.2 The Deposit is held by the Company by way of security for the due performance by the Tenant of all the terms of this Agreement binding on the Tenant and for the payment of all money owing to the Company by the Tenant and is hereby charged by the Tenant to the Company by way of security.
- 11.4.3 In the event of any failure by the Tenant strictly to comply with all the terms of this Agreement the Company shall have the right (without prejudice to any other rights available to the Company) to use the Deposit to reduce or settle in full any amount which may be owing by the Tenant to the Company or to make good to the Company any loss or damage which the Company may have suffered as a result of any such failure by the Tenant.
- 11.4.4 If the Company shall exercise its rights under this clause the Tenant shall restore the Deposit to its previous amount within such time as shall be specified by the Company.
- 11.4.5 The Company will calculate interest on the amount of the Deposit then held by the Company at the rate which is 1% above the deposit rate (with interest accrued six monthly) of such bank or building society as the Company shall nominate from time to time. The amount of the interest so calculated shall be paid to the Tenant (less tax) in October of each year.
- 11.4.6 Upon the termination of this Agreement and the terms of this Agreement binding on the Tenant having been performed by him the Deposit shall be repaid to the Tenant

together with interest due to the date of repayment less any sums due to the Company.

**11.5 Value added tax**

The Tenant shall pay to the Company such amount of value added tax at the rate for the time being in force as shall be legally payable in respect of all monies agreed to be paid by the Tenant under the terms hereof and in every case where the Tenant agrees to pay an amount of money such amount shall be regarded as being exclusive of all value added tax which may from time to time be legally payable thereon.

**11.6 Interest on late payments**

If the Tenant shall fail to pay any sum that is payable to the Company under the terms of this Agreement within 14 days of the date the sum falls due or if the Company is not willing to accept payment in order not to waive its rights then the Company shall have the right to charge interest both after as well as before any judgement at the Stipulated Rate on a day to day basis from the date such sum falls due until actual payment by the Tenant or acceptance by the Company and the aggregate interest due shall be recoverable at the option of the Company by action or as rent in arrear. This provision shall not affect any other right of the Company arising out of any such default by the Tenant and in enforcing this provision the Company shall take into account any outstanding credits on the Tenant's trading account.

**11.7 Appropriation and set off**

11.7.1 Both during and at the end of this Agreement the Company shall be entitled to appropriate or treat as appropriated any monies which may from time to time be paid by the Tenant to the Company or which it may hold of the Tenant or on behalf of the Tenant in or towards satisfaction of any rent or other monies due to the Company or other sums to which the Company is entitled under the terms of this Agreement or any sum due to be deposited with the Company pursuant to this Agreement or any other monies owing to the Company on any account whatsoever in such manner as the Company may think fit regardless of the purpose of which such money may have been expressed or intended to be paid by the Tenant or held by the Company and without any right on the part of the Tenant to interfere with or object to such appropriation under any circumstances whatsoever.

11.7.2 The Company shall have the right at its sole discretion to set off against any sums owing to the Tenant by the Company all or any sums due and owing by the Tenant to the Company on any account whatsoever and whether due under the terms of this Agreement or some other agreement.

11.8 **Severability**

If any provision of this Agreement is invalid or is made invalid by subsequent legislation this shall not affect the validity of the remainder of the provisions of this Agreement.

11.9 **Tenant's failure to insure**

In the event of the Tenant not insuring in accordance with its obligations under this Agreement the Company may insure on behalf of the Tenant and recover the cost from the Tenant.

11.10 **Exclusion from protection**

The requisite notice having been duly served by the Company upon the Tenant and the Tenant having made the requisite declaration (certified copies of which notice and declaration are attached to this Agreement) the parties agree that there is excluded in relation to the tenancy created by this Agreement the security of tenure provisions contained in Sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954.

11.11 **Employees**

11.11.1 In this clause "*Transfer Regulations*" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and "*Employees*" means those persons prior to the date of this Agreement employed by the Company for the purposes of the carrying on of the Business at the Premises.

11.11.2 For the avoidance of doubt the provisions of this clause (except for clause 11.11.5 which shall apply in any event) do not apply where the Premises have prior to this Agreement been subject to a tenancy whether held by the Tenant or a third party so that they apply only where (prior to this Agreement) the Employees were employees of the Company.

11.11.3 The parties declare that they both consider the transaction effected by this Agreement to constitute the transfer of part of an undertaking for the purposes of the Transfer Regulations and agree that the contracts of employment of the

Employees have effect from the date of this Agreement as if originally made between the Tenant and the Employees and that regulation 4 of the Transfer Regulations shall apply.

11.11.4 The Tenant having agreed to comply with his obligations under regulation 13 of the Transfer Regulations shall indemnify and keep the Company indemnified against all losses, costs, liabilities, expenses, actions, proceedings, claims and demands arising out of or in connection with:

11.11.4.1 any failure by the Tenant to comply with his obligations under regulation 13 of the Transfer Regulations;

11.11.4.2 any change in the working conditions of the Employees occurring on or after the date of this Agreement;

11.11.4.3 the change of employer occurring by virtue of the Transfer Regulations and/or this Agreement being significant and detrimental to any of the Employees;

11.11.4.4 the employment by the Tenant on or after the date of this Agreement of the Employees on terms different to those enjoyed immediately prior to such date; or

11.11.4.5 any claim by an Employee (whether in contract or in tort or under statute (including the Treaty of Rome and any directives made under the authority of that Treaty) for any remedy including, without limitation, for breach of contract, unfair dismissal, redundancy, statutory redundancy, a protective award, equal pay, sex or race or discrimination, on the grounds of sex, race, disability, sexual orientation, religion or belief, or age, unlawful deductions from wages, under the Working Time Regulations 1998 or the National Minimum Wage Act 1998 or for breach of statutory duty or of any other nature) as a result of anything done or omitted to be done by the Tenant after completion; or

11.11.4.6 a failure of the Tenant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Employees in respect of the period after completion.

11.11.5 Prior to the termination of this Agreement (howsoever or by whomsoever determined) the Tenant shall if required by the Company or its nominee supply the Company or its nominee with full particulars of all employees of the Tenant then engaged in the business at the Premises and with a copy of the contract of employment of each such employee and such other information relevant to such employees, including, the employee liability information set out in regulation 11 of the Transfer Regulations. If so required by the Company or its nominee the Tenant shall dismiss or make redundant all persons employed by the Tenant to work at the Premises and shall ensure that neither the Company nor its nominee nor any other person who shall subsequently occupy or operate the business at the Premises shall by operation of law become or be deemed to become the employer of any person employed at the Premises by the Tenant or by any other person at or prior to the date on which the Tenant shall give possession to the Company unless the Company or its nominee or such other person who shall subsequently occupy or operate the business at the Premises shall expressly consent thereto and the Tenant shall indemnify the Company or its nominee or any such other person against any actions claims demands liabilities and costs arising or potentially arising from such employment or deemed employment (including all costs whether in respect of contractual or statutory redundancy pay, pay in lieu of notice or otherwise arising out of the deemed or actual dismissal of such person(s) from employment) unless the Company or its nominee or such other person shall expressly elect in writing to continue such employment.

#### 11.12 **Miscellaneous insurance related provisions**

11.12.1 If a risk or contingency itemised, or otherwise included, as an Insured Risk shall no longer be insured or can only be insured at a rate which the Company considers to be uneconomical the risk or contingency shall cease to be treated as an Insured Risk from the time that cover is withdrawn and the Company has notified the Tenant of its withdrawal.

11.12.2 If the Premises are destroyed or damaged by Insured Risk, the Tenant will pay to the Company on demand the amount of any uninsured excess to which the insurance cover of the Company is subject.

### 12 **Whole agreement**

This Agreement constitutes the entire agreement between the parties and any statement or representations which may previously have been made does not form part of the agreement between the parties.

13      **Certificate**

It is certified that there is no agreement to which this Agreement gives effect.

Executed as a deed by the parties and delivered on the date of this Agreement.

## **SCHEDULE 1**

### **Rights**

The right for the Company and others authorised by it:

- 1 to erect or consent to the erection of any new building or to alter or consent to the alteration of any building for the time being on any land adjoining or neighbouring the Premises and to use or consent to the use of any such adjoining or neighbouring land as it seems fit notwithstanding that such erection, alteration or use may diminish the light and air enjoyed by the Premises and/or other benefits which do not materially affect the Business;
  - 2 for the benefit of any adjoining or neighbouring property and each and every part thereof to the free passage and running of water, soil, gas, electricity, telephone and other services from and to the said adjoining or neighbouring property through the conducting media now serving the Premises or within a period of 80 years hereafter to be laid or constructed in or upon or under the Premises;
  - 3 for the benefit of any adjoining or neighbouring property and each and every part thereof at all times upon reasonable notice (save in case of emergency) to enter upon the Premises and to lay down and construct therein or thereunder conducting media for the passage of water, soil, gas, electricity, telephone and other services for use in connection with any adjoining or neighbouring property including any reconstruction, alteration, addition or development of the same the Company or other person exercising the right nevertheless making good any damage to the Premises caused in the exercise of such right or making reasonable compensation to the Tenant where such damage cannot be made good;
  - 4 at all times upon reasonable notice (save in case of emergency) to enter the Premises or any part thereof for the purpose of inspecting, repairing, maintaining, altering, cleansing, decorating or rebuilding:
    - 4.1 any adjoining or neighbouring premises or any part thereof or any of the conducting media or service systems serving the same; and
    - 4.2 the Premises;
- the Company or other person exercising the right making good any damage to the Premises caused in the exercise of such right or making reasonable compensation to the Tenant where such damage cannot be made good;

- 5 to fix or erect advertisements, advertisement hoardings, billboards, posters and other advertising signs, devices or material on the outside part of the Premises or upon any land forming part of the Premises and to retain any income therefrom; and
- 6 to use all ways, easements, rights and privileges through over or against the Premises appurtenant or reputed as appurtenant to any adjoining or neighbouring property with the right to lay, maintain, cleanse, repair, renew or replace any conducting media or other ways and means by which such easements rights and privileges are enjoyed.

## **SCHEDULE 2**

### **Part 1**

#### **1 Responsibility for outgoings**

- 1.1 To pay all existing and future rates, taxes, duties, charges, assessments, impositions and outgoings of any description now or in the future assessed, charged or imposed upon or payable in respect of the Premises or their occupier during the Term.
- 1.2 In the event of any such rates, taxes, duties, charges, assessments, impositions or outgoings being assessed, charged or imposed upon or payable in respect of any premises of which the Premises form part or jointly with other premises to pay the proportion properly attributable to the Premises as certified by the Company.
- 1.3 To pay for all power, fuel, water, telephone and any other services in or to the Premises.

#### **2 Repair and decoration**

- 2.1 At all times to put, maintain and keep the Residential Area in a good and tenable state of repair and condition and working order in all respects to the Company's reasonable satisfaction (damage by fire or other risks against which the Company shall have insured excepted save where the insurance monies shall be wholly or partly irrecoverable by reason of the act of default of the Tenant or his servants, agents or invitees) provided always that the liability of the Tenant hereunder shall not extend to any part of the exterior or structure of the Premises or to the main service systems at the Premises (which form part of the Company's fixtures and fittings).
- 2.2 As often as the Company shall reasonably require and in any event at least immediately prior to the determination of this Agreement (however determined) thoroughly to prepare and paint with two coats of good quality paint in a proper and workmanlike manner all the interior wood, metal and other surfaces of all parts of the Residential Area previously or usually painted or which ought to be painted and with every such painting to wash, paper, colour and decorate the interior parts previously or usually or which ought to be so treated (to the reasonable satisfaction of the Company) provided that:

- 2.2.1 the Tenant shall pay to the Company (by direct debit) the sum of £80 per month (on the first day of the month) by way of contribution towards terminal decoration costs the first payment (or a proportionate part) being made on the date of this Agreement;
- 2.2.2 the Tenant shall procure that decoration immediately prior to determination (as referred to above) in colours and finishes approved by the Company and performed by a contractor whose identity shall be approved by the Company (which approval shall in each case not be unreasonably withheld);
- 2.2.3 if the Tenant shall fulfil its obligations in relation to such terminal decoration the Company will pay to the Tenant (upon the Tenant delivering up the Premises so decorated) a sum equal to the aggregate of the payments received by the Company from the Tenant in this respect together with a sum equal to interest at 1% above the deposit rate (with interest accrued six monthly) of such bank or building society as the Company shall nominate from time to time; and
- 2.2.4 if the Tenant shall fail to fulfil its obligations in relation to such terminal decoration the Company shall be entitled to carry out the relevant works in which event the Tenant shall be paid only such sum (if any) as is equal to the difference (where it is a positive figure) between the cost incurred by the Company and the aggregate of the sums received by the Company (but without prejudice to the Company's rights to damages in respect of the Tenant's breach of covenant).
- 2.3 Notwithstanding paragraphs 2.1 and/or 2.2 at his own expense to comply with Tenant's maintenance obligations set out in Part 2 of this Schedule and shall also emulsion, paint or otherwise treat as required by the Company areas (other than the cellar) used for the storage of trading or other goods at least once a year. In the event of any conflict between paragraphs 2.1 and 2.2 and this paragraph, this paragraph shall apply.
- 2.4 Not do anything at or to the Premises which would damage or be likely to damage the Premises or its fabric or any equipment, appliances or systems on the Premises (belonging to the Company or its agents or to any person having authority to be at the Premises pursuant to the terms of this Agreement) and will rectify forthwith any matter likely to result in damage.
- 2.5 To permit the Company and its agents and all persons authorised by the Company with or without workmen and others at all times upon giving reasonable notice (except in the case of emergency) to enter upon and examine the condition of the

Premises and thereupon the Company may serve upon the Tenant a notice in writing specifying any repairs or other works necessary to be done in accordance with the Tenant's obligations and agreements herein contained and require the Tenant forthwith to carry out the same and if the Tenant shall not within a reasonable period after service of such notice proceed diligently with the carrying out of such repairs or other works then the Tenant shall permit the Company to enter upon the Premises and execute such repairs or other works and the cost thereof shall immediately be due from the Tenant to the Company, shall be deemed to be due as a further rent and shall be forthwith recoverable accordingly.

**3 Handing back of the Premises to the Company**

To hand the Premises back to the Company in a proper state of repair and condition (consistent with the Tenant's obligations) and with full vacant possession upon the termination of this Agreement with all additions and improvements (except any the Company require to be reinstated) and all the Company's fixtures and fittings in the condition which they would have been in if the Tenant had complied with all his obligations under this Agreement and in addition shall hand back in good condition any moveable property in or upon the Premises which belongs to the Company.

**4 Insurance**

- 4.1 At all times during the Term to insure and keep insured with an insurance company designated by the Company third party and public liability risks in such sum (being not less than £2 million initially) as the Company shall from time to time direct.
- 4.2 At the Company's request to show to the Company the policy or policies of such insurance and the receipt for the current year's premium in respect of such policy and to procure that the Company's interest is noted on such policy or policies.
- 4.3 To apply money received by the Tenant in respect of the policy or policies immediately in making good the loss or damage for which the payment is made and, if such money is insufficient, the Tenant forthwith to make up the deficiency from his own money.
- 4.4 Not to bring or do or allow to be brought or done anything upon the Premises which either increases any premium payable by the Company for insuring the Premises against the Insured Risks or any of the other matters in respect of which

the Company shall have effected cover as referred to in the definition of "Insurance Rent" or makes any policy of such insurance void or voidable.

- 4.5 Not to keep on the Premises any materials or substance of a dangerous, explosive or combustible nature (save for usual domestic purposes or the usual purposes of the Business and not then except in accordance with the provisions of any relevant Act or Acts of Parliament and after due notice to the Company and subject to the payment or reimbursement to the Company of any increased or extra insurance premium payable by the Company necessitated thereby).
- 4.6 If the insurance of the Company is vitiated in whole or in part on consequence of an act or omission of the Tenant, persons occupying or enjoying the use of the Premises through or under the Tenant or their respective employees, workmen, agents or visitors, the Tenant will pay to the Company on demand a sum equal to the amount of the insurance monies which have become irrecoverable in consequence of that act or omission.

## 5 **Alterations of Premises**

- 5.1 Not in any way to alter or add to the Premises and in particular (without detracting from the generality of the Tenant's obligation in this respect) not to:
- 5.1.1 make any addition or alteration to the Premises whether external or internal, structural or otherwise or to any means of access or egress or to the elevation, external or internal design or appearance or layout of the Premises;
  - 5.1.2 make any addition or alteration to the external decorative scheme of the Premises or to the internal decorative scheme of the Trade Rooms;
  - 5.1.3 make any addition or alteration to the electrical wiring or to any of the service systems at the Premises;
  - 5.1.4 erect or place any new building or structure of any kind on the Premises;
  - 5.1.5 demolish or pull down any part of the Premises;
  - 5.1.6 make any temporary additions to the Premises;
  - 5.1.7 allow any temporary structure such as a shed or market stall or any temporary or portable building to be placed upon the Premises;

- 5.1.8 place or leave or permit to be placed or left any caravan or mobile home on any part of the Premises;
- 5.1.9 change the character or use of such of the Trade Rooms as are open to customers or any part thereof;
- 5.1.10 take down or alter any external sign or signboard or notice erect any new external sign or signboard or notice or make any alteration or addition to the external painted or illuminated signs or to the signpost or to the external lighting of the Premises;
- 5.1.11 install any objects or things other than tables and seating for use by customers in such of the Trade Rooms as are open to customers so as to reduce materially the uncovered floor area therein;
- 5.1.12 install any apparatus or equipment which results in the overloading or potential overloading of the existing electrical system at the Premises;
- 5.1.13 install any automated pipe cleaning system without such system first being approved by the Company; and
- 5.1.14 install any gas systems which are not of a type and/or which are not made by a manufacturer approved by the Company.
- 5.2 Not without the prior written consent of the Company to alter the position of the existing Beer, Liquor or other drink dispense points or install any additional Beer, Liquor or other drink dispense points.
- 5.3 Notwithstanding the foregoing provisions of this paragraph 5 the Tenant may with the prior consent in writing of the Company (which shall not be unreasonably withheld) carry out such alterations as may be requisite to enable it to comply with its obligations under paragraph 16.1 of this Part 1 of this Schedule.
- 5.4 Without prejudice to any other provisions of this Agreement during the period of six months immediately preceding the termination of this Agreement (unless requested not to do so by the Company) at the Tenant's own expense to reinstate the Premises as the same were prior to the execution of any additions or alterations which may have been carried out by the Tenant during the Tenancy whether pursuant to any consent given by the Company or otherwise (but so that this shall not apply to alterations carried out for compliance with the obligations set out in paragraph 16.1 of this Part 1 of this Schedule).

## 6 **Restriction on assignment, underletting, franchising, etc**

- 6.1 Not to assign underlet grant a licence to occupy mortgage charge or part with or share possession of the whole or any part of the Premises except that this clause shall not prohibit the Tenant from permitting a member of staff employed full time in the running of the Business from living on the Premises as a service occupant whilst such member is so employed and the relationship of landlord and tenant shall not be created nor any security of tenure.
- 6.2 Except with the prior written consent of the Company (in the giving or withholding of which the Company shall have an unfettered discretion) not to grant a franchise or other right to trade or grant any similar type of concession to any person or company in respect of the whole or any part of the Premises or at any time form any company partnership or other association which shall have an interest in or otherwise affect the Premises or the business carried on therein.

## 7 **User**

- 7.1 To use the Premises only for the purposes of the Business, that is to say as a public house for the sale of drinks and the provision of food and other refreshment (and ancillary thereto) other normal public house entertainment facilities (and where applicable accommodation for paying guests, subject to paragraphs 7.3 and 7.8 and whereby no security of tenure is conferred on such guests) upon the terms and conditions of this Agreement provided that (for the avoidance of doubt) the use of the Premises of any part thereof for brewing or any other manufacturing process or as a place from which to carry on or conduct the wholesaling or distribution of Beer or Liquor or other drinks or food is not within the permitted use.
- 7.2 Not to use the Premises for any illegal or immoral purpose nor cause or suffer to be caused anything which may be or become a nuisance, annoyance or inconvenience to the Company or to the owners or occupiers of adjoining or neighbouring property.
- 7.3 At all times to reside on the Premises and to procure that the whole of the living accommodation at the Premises is occupied only by himself and his immediate family and his employees engaged solely in the Business (or by paying guests where the use of part of the accommodation at the Premises for such purpose is, subject to paragraph 7.8, authorised by the Company).

- 7.4 Not to permit itinerant or other vendors or retailers to trade on or from the Premises nor permit the Premises or any part thereof to be used for exhibitions, political meetings, auctions, markets, car boot sales or street trading.
- 7.5 Not to use or permit to be used any part of the Premises as a caravan or camping site.
- 7.6 Not to allow or permit lottery tickets trading stamps or other like items to be sold or distributed in or about the Premises except as permitted by the Company.
- 7.7 Except in accordance with any prior written consent given by the Company not to allow the Premises to be used for organised group recreational or instructional purposes by or for members of the public other than pub games or other recreation (if any) of the type already taking place at the Premises at the date of this Agreement.
- 7.8 Not to let any bedrooms without the consent in writing of the Company provided that:
- 7.8.1 where bedrooms are available for letting the Premises must have a statutory fire certificate (if required in law) which the Tenant is wholly responsible for obtaining having first received the written approval of the Company; and
- 7.8.2 the Company shall not be obliged to carry out any works or install any signs which may be necessary to make the Premises comply with the Fire Regulations for the time being in force in connection with letting bedrooms.
- 7.9 Not to cause damage to and/or obstruction of the drains and sewers of the Premises and not to discharge any toxic, corrosive, noxious or other deleterious materials into them.

## 8 **Amusement Machines**

- 8.1 To permit the Company (and/or its suppliers) to enter upon the Premises as required to enable the Company to:
- 8.1.1 install (or procure the installation of) such Amusement Machines as it shall from time to time determine to be requisite (in such positions as it shall consider appropriate);

8.1.2 remove (or procure the removal of) Amusement Machines previously installed in accordance with paragraph 8.1.1 above (or already installed at the date of this Agreement).

8.2 Not to bring or (save as provided in paragraph 8.1 above) permit any Amusement Machine to be brought into or operated on the Premises without the prior written consent of the Company which the Company may make subject to compliance with such stipulations (including as to supply by/through the Company) as the Company shall specify and where the Tenant is notified by the Company in writing that any such consent has been withdrawn the Tenant shall remove or procure the relevant Amusement Machine from the Premises forthwith provided that the Tenant shall (where the relevant contract for leasing rental hire or other arrangement for supply is entered into by the Tenant and not the Company):

8.2.1 pay to the Company (at such intervals as the Company shall stipulate) one-half of the income derived from all such Amusement Machines from time to time (subject to deduction of such Excise Duty and leasing, rental, hire and other costs as are paid by the Tenant to the supplier in that respect); and

8.2.2 provide to the Company such evidence of Excise Duty payments and procure that the relevant suppliers shall provide direct to the Company all such invoices, receipts and other records as necessary to enable the Company to be satisfied as to the sums due to it from time to time in this respect.

9 **No slate club**

Not to establish or carry on or permit to be established or carried on upon or in connection with the Premises any money, slate, savings, share out, loan or similar Club or Society.

10 **Not to give bill of sale**

Not to give any bill of sale or preferential security on his goods or effects to any person or persons or create any lien thereon.

11 **Long term agreements**

Not to enter into any agreement to hire or rent any equipment or article of whatsoever nature for use on the Premises for the supply of services to the Premises which shall be incapable of termination prior to the determination of this Agreement and where the Tenant is in default in the observance of this paragraph

the Tenant shall (without prejudice to any other right or remedy on the part of the Company) remove any such equipment or article at the expiration or sooner determination of the Term.

12      **Easements**

Not to permit the acquisition of any public or private right or easement over or affecting the Premises and in case of any attempt at or risk of such acquisition to give immediate notice thereof to the Company and to comply with all reasonable directions given by the Company in relation to such matters.

13      **Advertisements**

Except as permitted pursuant to Schedule 3 not to permit any advertisement, advertisement hoarding, bill-board, poster or other advertising sign, device or material to be placed, or displayed in, or erected upon, or affixed to the Premises unless the Tenant shall have previously obtained the written consent of the Company (whose discretion in granting or withholding any consent shall be unfettered) provided always that all external advertising sites shall remain specifically reserved to the Company as provided in paragraph 5 of Schedule 1.

14      **Company's rights of entry**

14.1      To allow the Company and its agents and all others authorised by it at all times on reasonable notice (or at any time without notice in cases of emergency or where the Company reasonably suspects breach by the Tenant of his obligations under this Agreement) to enter the Premises whenever so required by the Company and in particular without prejudice to the generality of the foregoing:

14.1.1    to execute rebuilding, maintenance, repairs, alterations, painting, decoration or other works to the Premises or the service systems at the Premises which form part of the Company's fixtures and fittings;

14.1.2    to construct, lay down, maintain, alter or repair any conducting media in or under the Premises;

14.1.3    to carry out surveys for any purposes or to inspect and record the state and condition of the Premises and their contents and the Tenant's Inventory or to examine the Beer raising and Beer dispensing equipment or to examine or take account of any moveable property on the Premises belonging to the Company;

- 14.1.4 to ascertain that the Tenant's obligations contained in this Agreement have been duly observed and performed;
- 14.1.5 to execute such works of repair, maintenance, alterations, restoration, painting, decoration or other works as may be necessary to remedy any breach of the Tenant's obligations under this Agreement;
- 14.1.6 to inspect the stock of Beer and Liquor and other goods for sale and to take samples at the rate at which the Tenant paid for the same and to examine any casks and other vessels and any bottles and cases on the Premises and the contents thereof; and
- 14.1.7 to require the removal of any signs or advertising material to which the Company shall have objection.
- 14.2 Provided that the Company shall in exercising these rights use all reasonable endeavours to do as little damage and to cause as little interference as reasonably possible but shall not be liable to compensate the Tenant for any losses, damage or interference which may be caused except that the Company will make good any damage to the Tenant's Inventory or to any decorations for which the Tenant is responsible.
- 14.3 To allow the display of agents' boards on the Premises relating to the sale letting or other disposition of the Premises.
- 14.4 To permit prospective tenants or purchasers or other persons authorised by the Company or its agents to enter and view the Premises at all reasonable times during the Term.

## 15 **Costs**

- 15.1 To pay on demand all costs charges and expenses including Solicitor's and Surveyor's fees and commission payable to a Bailiff which may be incurred by the Company:
  - 15.1.1 in contemplation, preparation, service or enforcement of any notice under Sections 146 and 147 of the Law of Property Act 1925 or any other notice requiring the Tenant to comply with the Tenant's obligations hereunder notwithstanding that forfeiture (if applicable) is avoided otherwise than by relief granted by the Court;
  - 15.1.2 in connection with or in procuring the remedying of any breach of this Agreement on the part of the Tenant;

15.1.3 incidental to or as a result of any application by the Tenant for any consent or licence required by this Agreement whether such consent be granted or refused.

16 **Statutory obligations and notices**

16.1 At the Tenant's expense to execute all works to comply with all obligations and to supply all information which is or are or may be required in pursuance of the Planning Acts and any other general or local act of parliament now or hereafter to be passed or any instruments regulations orders or directions made or issued under any such act or by any district council or local public or other competent authority upon or in respect of the Premises or the manner in which they are used and at all times to indemnify and keep indemnified the Company against any non-performance or non-observance thereof and to repay to the Company on demand any costs, charges or expenses that may be incurred by the Company in respect of any such works, obligations or information provided that this clause shall not place upon the Tenant any obligation to carry out works or maintenance, renewal, repair or decoration to the Premises except as specified in paragraph 2 of this Part 1 of this Schedule 2.

16.2 To give full particulars to the Company of any notice, direction or order or proposal for a notice, direction or order made, given or issued to the Tenant in respect of the Premises or any part of them by any government department or officer or by any officer of any District Council or any local or public authority immediately upon the receipt of such and if so required by the Company to produce such to the Company and without delay to take such steps as the Company shall direct provided that without affecting the generality of the foregoing this clause shall apply to any notice or communication relating to the sanitary condition of the Premises or their fitness for habitation or use and to any notice or communication relating to rating or value added tax or other taxes and shall specifically apply to any notice or complaint or communication received from the Relevant Authority or an environmental health officer or fire officer or police officer and to any request to give an undertaking relating to the Premises or to the Premises Licence and to any other notice or communication directly or indirectly affecting the interests of the Company.

16.3 To give immediate notice to the Company of any complaint or objection by any neighbour or other neighbouring body concerning noise, nuisance or misconduct or any allegation in respect thereof or in any way reflecting upon the Tenant's conduct of the business and to take such steps in that respect as the Company shall direct.

16.4 To give immediate notice to the Company of any damage done to the Premises by fire, accident or otherwise.

17 **Third Party Property**

17.1 The Tenant will not permit any Third Party Property to be brought on to or installed at the Premises or affixed to or connected to any part of the Premises or to any of the Company's fixtures and fittings unless such Third Party Property is of the description specified in Schedule 3 to this Agreement and unless the Tenant shall first obtain the prior written consent of the Company. Such consent shall not be unreasonably withheld but the Company may require such documentary evidence as it sees fit that such property is owned by a third party and of the terms on which it is supplied to the Tenant including responsibility for safety and may impose such conditions as it thinks desirable intended to prevent injury or damage to the Premises (including the Company's fixtures and fittings) or to any person for the time being at the Premises. In the event of any conflict between this paragraph and paragraph 8 of Schedule 2 Part 1 the provisions of this paragraph shall prevail.

17.2 The Tenant will ensure that all Third Party Property is kept in good order and condition and that it is of a type quality and design which is in accord with the Company's Service Retailing Standards and the Company's service and quality standards as specified whether in the Business Plan or elsewhere and will procure the repair or replacement of damaged worn or obsolete items whenever required by the Company so to do.

17.3 At the end of the Term the Tenant will unless otherwise directed by the Company procure the removal of all Third Party Property and shall make good any damage or injury to the Premises or to the Company's fixtures and fittings occasioned by the removal of such Third Party Property.

**Part 2**

**Tenant's maintenance obligations**

The Tenant has a general statutory responsibility under the Health and Safety at Work Regulations and other legislation for ensuring that the Premises are safe for customers and staff and is required to report faults for which the Tenant is not responsible immediately. In addition to the repair and decoration obligations specified in paragraphs 2.1 and 2.2 of Schedule 2 Part 1 of this Agreement the Tenant is required at his own expense to undertake

all day to day maintenance (which will include the items specified below) and generally to present the Premises to the public in the most advantageous way. In particular without affecting the generality of the foregoing the Tenant shall at his own cost comply with the following obligations:

- 1 the Premises must be kept clean tidy and free from all rodents, ants, birds and other pests and verminous infestations. Domestic animals and pets must be properly housed and not be allowed to foul the Premises. Aviaries, fish tanks and other like attractions for customers must be properly constructed and maintained and kept clean and wholesome. Ponds and their surrounds must be kept clean and tidy; and
- 2 the whole of all washable exterior elevations and fascias and all windows must be washed as frequently as necessary to maintain them in a clean state;
- 3 gardens must be kept cultivated tidy and clean including any lawn forming part of the Premises. Hedges, trees and shrubbery must be kept trimmed and all fences, gates, paths and paving repaired maintained and replaced and all ditches cleaned out and kept free from obstruction. All play equipment (including safety flooring) must be inspected regularly (with appropriate written records kept and available for inspection) and maintained in a safe working order;
- 4 irrigation/automatic watering systems shall be so arranged that water falls away from the building (and does not cause damage to the building and in particular to window frames sills and other timber);
- 5 car parks, yards and forecourts and the cellar drop must be kept clean and tidy and unobstructed and free from rubbish and weeds. The Tenant is responsible for keeping these and other parts of the Premises free from bottle banks the parking of caravans, mobile homes, boats and heavy goods vehicles (except while unloading) or from such other similar uses unless permitted in writing by the Company and also free from disused vehicles and moveable or immovable stalls and sales pitches. The Tenant shall also take all reasonable steps necessary to prevent the car park being used for the parking of cars or other vehicles by persons not at that time patronising the Premises as customers except that unless the Company otherwise directs this requirement shall not apply to cars or other vehicles which are the property of the Tenant or his family or employees living at or working at the Premises;

- 6 the interior of the Premises and in particular all bar areas, dining area, meeting rooms, serveries, toilets, cellars and other storage areas, kitchens, cold room, freezers and other food preparation and serving and storage areas and surfaces must be kept in a clean and hygienic state and condition. All materials and surface coverings including fly screens required to comply with the standards called for by the Environmental Health Department of the Local Authority must be supplied by the Tenant at the Tenant's cost unless the Company otherwise directs. The Tenant is responsible for all furnishings including carpeting, linoleum flooring, rugs, safety flooring and any other floor coverings, curtains, fixed and loose furniture together with bric a brac, mirrors, shelving, built in cupboards and wardrobes;
- 7 all drains, grease traps, manholes and pipes to junction with local authority sewers, sanitary apparatus and fittings, wastes, cellar sumps, rainwater pipes, gullies, roof gutters and flat roofs must be kept clean and unobstructed and all cesspits and septic tanks must be kept wholesome and regularly emptied. (This does not include repair or replacement of broken drains or pipes);
- 8 all defective pumps, water taps, tap washers, valves, cisterns, stop-cocks, cold and hot water systems, plant watering systems and other services supply pipes above ground level and sanitary apparatus and fittings for the whole of the Premises including the private quarters (and for the letting bedrooms if any authorised by the Company for use as such) must be repaired or replaced when necessary and maintained in full working order (this does not include structural defects or repairs below ground level). All pipe leaks, bursts and running overflows must be promptly attended to;
- 9 all portable heating and ventilation appliances, lagging and insulation, fire alarms or detectors, fire-fighting and extinguishing apparatus, emergency lighting and illuminated exit signs must be maintained in full working order and repaired or replaced when necessary together with the adjustment of controls to main heating and ventilation systems;
- 10 all broken or damaged glass in any part of the Premises must be replaced with glass of the same quality description and thickness;
- 11 all defective door locks, door-closers, latches, hinges, keys, bolts, window fastenings and fittings must be repaired or replaced where necessary. The Tenant will be responsible for the provision repair and renewal of any special locks or other security devices and for the easing of any doors and windows and the replacement of any defective sash cords;

- 12 the Tenant is responsible for electrical repairs where the source of the fault is found to be in the Tenant's fittings or equipment from the rose downwards or socket outlet together with renewal of fuses. The Tenant is responsible for keeping clean all painted and illuminated signs, exterior lighting apparatus and flood-lighting appliances and for the replacement of bulbs, strip lights and other similar items and for the renewal and repair of all internal light fittings and flexes including the renewal of all internal light bulbs, tubes, lamps and other lighting elements and for the renewal or replacement of defective heating elements. All such electrical work other than replacement of bulbs, tubes and fuses must be carried out by a qualified electrician. Work not carried out by a Company approved contractor will be the Tenant's responsibility;
- 13 the Tenant will also be responsible for maintenance of intruder alarms and CCTV, door bells and intercom systems, music and entertainment installations, aerials (of all types) and satellite dishes, catering equipment, bottle fridges, cold shelves, hand dryers, water softeners, all portable appliances, including televisions, refrigerators, video recorders, tumble dryers, washing machines, glass washers and ice makers, microwave ovens, smoke detectors and telephone systems. All portable appliances must be regularly tested and maintained in accordance with regulations from time to time current.
- 14 the Tenant must not overload the electrical wiring, cables or other apparatus on the Premises;
- 15 the Tenant must take all reasonable precautions against damage by frost to any sanitary or water apparatus or conducting media at the Premises;
- 16 grates and guards to live fires must be repaired or replaced when necessary;
- 17 all necessary portable fire-fighting equipment must be provided by the Tenant and maintained in a proper serviceable state. Where appropriate the Tenant must seek advice from the manufacturers or suppliers and keep (available for inspection by the Company) a record of servicing and maintenance;
- 18 the Tenant must at his own expense provide such number of covered dustbins and other receptacles for the reception and collection of waste and refuse from the Premises as may be required by the appropriate local authority. Such dustbins must be of a material, size and construction approved by the local authority and the Tenant shall pay any charges which may be imposed by the local authority for the removal of waste and refuse from the Premises; and

- 19 in the event of the Tenant not carrying out any of the Tenant's obligations set out in this Part of this Schedule then the Company may undertake such obligations and recover the cost from the Tenant.

**Part 3**  
**Company's obligations**

- 1 To put and keep in a good and substantial state of repair and condition (including (where appropriate) decorative repair) all such parts of the Premises as are not (subject to the provisions of Part 2 of this Schedule) within the responsibility of the Tenant under paragraph 2 of Part 1 of this Schedule 2 (including drainage and car park surfaces and cellar decoration) provided that the Company shall not be liable to carry out works of decoration more frequently than once in every five years.
- 2 To procure annual servicing, cleaning and routine maintenance of such boilers, extractor fans and chimneys as are comprised in the Premises.

## **SCHEDULE 3**

### **Part 1**

#### **The Business covenants**

#### **1 The Company's services to the Tenant**

1.1 The Company will use all reasonable endeavours to maintain a high reputation for its public houses and its Beers and to provide at the request of the Tenant the following support to the Tenant:

1.1.1 consultancy and advisory services from the Company's trade management available to the Tenant whenever reasonably necessary to advise him in the efficient operation of a McMullen public house including the sale of Beers, wines and spirits and soft drinks and food and the operation of Amusement Machines including the suitability of suppliers and of particular types of machines;

1.1.2 advertising and promotion of its main Beers including reasonable provision of merchandising material;

1.1.3 guidance for the Tenant over a range of service retailing techniques appropriate to a McMullen public house; and

1.1.4 advice on maintenance, decor, furnishings and equipment for which the Tenant is responsible.

1.2 The Company will be responsible for the supply and the maintenance of all cellar dispense equipment including cellar cooling, python cooling and beer engines but not the post mix dispense equipment (which is the responsibility of the Tenant).

1.3 The Company will arrange an initial induction training course (including training in relation to licensing and business development, bookkeeping, health and safety procedures and food safety procedures).

1.4 The Company will permit the Tenant to attend its training courses from time to time (subject to the Tenant discharging the cost of such attendances).

#### **2 Tenant's covenants**

2.1 To comply with the obligations as to Licensing set out in Part 2 of this Schedule and it is hereby expressly provided that any addition to the value of the Premises attributable to the Premises Licence shall belong to the Company.

- 2.2 To attend (at his own expense) the initial induction training course referred to in paragraph 1.3 above.
- 2.3 To conduct on the Premises the Business subject to and in accordance with the terms of this Agreement and to use his best endeavours to develop and maintain the Business and at all times to make a prominent display in the trading parts of the Premises of Beer and Liquor supplied by the Company and/or its Nominated Suppliers.
- 2.4 To implement the Business Plan with a view to developing the potential of the Business. The Tenant shall meet with representatives of the Company as and when required by the Company to discuss the implementation of the Business Plan and to discuss amendments to it from time to time.
- 2.5 To endeavour to achieve at least the target level of volume purchases of designated Beers and designated Liquors which in the opinion of the Company (as notified separately to the Tenant by the Company) could reasonably be expected to be achieved at the Premises by a good competent licensee carrying on the Business in a willing and efficient manner (and complying (inter alia) with the obligations set out in paragraph 2.3 above).
- 2.6 To ensure that at all times the Tenant holds on the Premises sufficient stocks of the designated Beers and Liquors as are necessary (consistent with satisfactory quality control) to meet reasonably anticipated demand and under such conditions as are acceptable to the Company and to display such information relating thereto as the Company shall from time to time require.
- 2.7 To carry on the Business personally and not without the Company's prior consent in writing to be directly or indirectly engaged interested or concerned or be employed in any capacity whatsoever in any business other than the Business and to devote the time and attention to the Business necessary to ensure the full exploitation of the Business.
- 2.8 To ensure that all casks, kegs, cases, crates, beer, cider and soft drink bottles, CO<sub>2</sub> dispense cylinders and other containers (other than non-returnable bottles or containers) supplied by the Company shall at all times remain and be the property of the Company and that the Company shall be entitled to charge the Tenant a deposit thereon which shall be payable with the account for the contents thereof but which shall be refunded or credited on the return of such containers to the Company in good condition.

- 2.9 To provide maintain and keep the Tenant's Inventory in good order and condition and of a type quantity quality and design which are in accord with the Company's service and quality standards as specified (whether in the Business Plan or elsewhere) and to repair or replace damaged worn or obsolete items whenever reasonably required by the Company to do so.
- 2.10 Throughout the Term to keep the Trade Rooms:
- 2.10.1 suitably and attractively furnished and not (save so as to comply with an obligation to the Company in respect of the disposal) to sell charge or dispose of all or any part of the Tenant's Inventory without the prior written consent of the Company; and
- 2.10.2 open to the public for trading at all times that the Premises are open for trading.
- 2.11 To comply with the Company's requirements regarding the timing and method of placing orders and taking deliveries of beer or Liquor and all other goods purchased by the Tenant from the Company and the collection of returnable containers.
- 2.12 To permit the Company to inspect all documents relating to any designated Beers at the Premises.
- 2.13 To supply (or procure the supply) and maintain (or procure the maintenance) of all post-mix installations requisite for the carrying on of the Business at the Premises.
- 2.14 To provide to the Company as soon as practicable (when requested by the Company to do so) copies of the accounts of the Business which have been submitted to Inland Revenue for taxation purposes (and to provide evidence of agreement as and when agreed by Inland Revenue).
- 2.15 To notify the Company as soon as practicable of any changes in the financial and/or personal circumstances which have occurred (or of circumstances which may cause such changes to occur) in respect of the Tenant and which are or may reasonably be likely to be such as to impact adversely upon the Business and/or the ability of the Tenant to carry on the Business.

### 3 **Accounts and Payments**

- 3.1 To provide to the Company:

- 3.1.1 each calendar month a copy of the management accounts (including profit and loss accounts, balance sheets and cash flow analyses) for the Business relating to the immediately preceding calendar month;
- 3.1.2 after each Business year end and after the termination of this agreement financial statements certified by a qualified accountant as accurately showing the gross turnover of the Business for the preceding business year or for the period from the last Business year end up to the date of termination.
- 3.2 The Operator agrees that the Company or its agents shall at all reasonable times have the right to examine or audit the books accounts and records of the Operator relating to the Business including the right of entry at all reasonable times upon the Premises to verify the gross turnover.

### 3.3 **General**

The Operator undertakes with the Company that it will:

- 3.3.1 keep the Company fully informed as to all material developments regarding its financial and business affairs and notify the Company forthwith upon becoming aware of any significant matter affecting or likely to affect the Business; and
- 3.3.2 deliver to the Company such other financial or management information as the Company may from time to time reasonably request.

## 4 **Service Retailing Standards**

In recognition of the importance attached by the Company to its reputation for service retailing and quality control generally and to the products and facilities offered for sale in its public houses and to the image of those public houses:

- 4.1 at his own expense to comply with all reasonable directions by the Company as to the conduct or standard of the business of the Premises and in particular to comply with the Service Retailing Standards set out in Part 2 of this Schedule and both for himself and his employees and agents to carry on the Business in a courteous and efficient manner so as to preserve and maintain the good character of the Premises with the public;
- 4.2 to keep the Premises open for the sale of Beer and Liquor and non-alcoholic refreshments every day for at least the Core Trading Hours;

- 4.3 if so required by the Company to display a notice on the exterior of the Premises indicating the Core Trading Hours;
- 4.4 to stock the Principal Products and other merchandise and by all other means available promote the sale of the Principal Products and other merchandise, the Principal Products being a minimum range only as the Company may from time to time serve written notice upon the Tenant varying the list specified in Part 5 of Schedule 3 whether generally or on an individual basis;
- 4.5 to provide and promote the sale of non-alcoholic refreshments including food and the other services and facilities (if any) specified in the Business Plan as ancillary to the use of the Premises as a public house for the sale of drinks and during such hours (if any) as may be specified in the Business Plan;
- 4.6 to maintain in operation for the entertainment or use of customers at all times when the Premises are open for business any authorised Amusement Machines which are for the time being on the Premises whether pursuant to paragraph 8 of Schedule 2 Part 1 of this Agreement or otherwise;
- 4.7 to comply with all the provisions of the Gaming Act 1968 and any other Statute or Regulation relevant to any Amusement Machines for the time being on the Premises;
- 4.8 not to dilute or alter the quality of any Beer or Liquor purchased from the Company or its Nominated Suppliers nor to use for any purpose whatsoever any overspill or residue from Beer sold to the public nor to use or permit or knowingly allow any containers or other receptacles used for storage or distribution of Beer to be used for any other purpose than that for which they are intended and to ensure that CO<sub>2</sub> pressure beer dispense equipment which is or may at any future time be installed in the Premises or loaned to the Tenant for use by him is not allowed to pass out of his possession or control and will be used only by persons properly trained by the Tenant;
- 4.9 to keep the stock of Beer and Liquor so that it shall be sold in good condition and to ensure that any products or goods properly made available for sale on the Premises conform to the quality specification determined by the Company from time to time. For this purpose the Tenant agrees to make use of such equipment as may reasonably be required by the Company for the sale of such products or goods in good condition and for their service under clean conditions;

- 4.10 to ensure that prices for all Beer, Liquor and other products made available for sale on the Premises are properly displayed in accordance with all relevant statutory provisions;
- 4.11 to support the Company's endeavours to advertise and promote its goods and for this purpose to exhibit in a conspicuous place upon the Premises all advertising signs devices and materials (including counter hats and showcards advertising the supply of Beer or Liquor and other point of sale items) supplied by the Company and not to use point of sale or other advertising material which advertises Beers and/or Liquors not supplied by the Company and/or its Nominated Suppliers; and
- 4.12 within a reasonable period of notification to correct any failure to comply with any of these provisions contained in and the standards required by this Agreement as determined by the Company on inspection and remove and if necessary replace in such period any equipment supplies food or stock which do not meet the standards and specifications required by the Company.

## 5 **Supply of Beer and Liquor**

- 5.1 The Tenant covenants:
- 5.1.1 to purchase only from the Company or its Nominated Suppliers all his requirements for the designated Beers and Liquors for sale in the Premises for consumption on or off the Premises;
- 5.1.2 (save to the extent and as provided in this part of this Schedule) not to keep any Beer or Liquor for sale or distribution to customers in or about the Premises unless it shall have been purchased from the Company or its Nominated Suppliers; and
- 5.1.3 not to sell or make available for purchase or bring onto the Premises for the purpose of resale any:
- 5.1.3.1 Beer other than the designated Beers supplied by the Company or its Nominated Suppliers except for Beers of a different type from any of the designated Beers and where such other Beer is in bottles cans or other small packages;
- 5.1.3.2 (except for Liquors of a different type) Liquors other than the designated Liquors supplied by the Company or its Nominated Suppliers.

5.2 The Company will to the best of its ability supply the Tenant with (or will procure the supply by its Nominated Suppliers to the Tenant of) all the Tenant's requirements for the designated Beers and Liquors which the Tenant shall be ready and able to pay for. In the event of the Company or its Nominated Suppliers failing to supply for any reason other than the Tenant's inability to pay the Company, the Company will on application from the Tenant release the Tenant from his exclusive purchasing obligations under this paragraph 4 to such extent as shall be appropriate having regard to the nature and likely duration of that failure to supply, provided always that if the Tenant shall neglect or fail to pay for any goods or services supplied to him by the Company or its Nominated Suppliers on demand pursuant to paragraph 4.5 hereof the refusal by the Company or its Nominated Suppliers to supply further goods or services to the Tenant without prepayment in full for so long as such neglect or default shall continue shall be no defence to any action the Company may take in respect of any breach by the Tenant of his obligations under this Agreement.

5.3 The Tenant agrees:

5.3.1 to make payment to the Company (or such person as the Company may direct from time to time) for all Beer and Liquor and other goods or services supplied by the Company and its Nominated Suppliers promptly on demand (by direct debit or in such other manner as the Company may require) all goods to be charged at the prices specified in the Company's current standard trade price lists and if so required by the Company to pay cash in advance for any goods previously delivered or collected for which payment by the Tenant is in arrear and to pay on quitting the Premises for all goods which shall have then been supplied by the Company or its Nominated Suppliers whether or not it is the time for payment for the same according to the terms of payment then subsisting;

5.3.2 to observe all the other conditions of sale for the time being applicable on which the Company and/or its Nominated Suppliers supplies Beer and Liquor or other goods or services to the Tenant as from time to time stated in the Company's current standard trade price lists or as otherwise notified by the Company to the Tenant;

5.3.3 not to withdraw the instructions to the Tenant's bankers to make payment by direct debit in those cases where payment is so required by the Company unless the Company has insisted on payment by cash in advance or some other method of payment. If the Tenant makes default in such a case in the payment of his trading

account by direct debit then the Company shall be entitled to require that all Beer and Liquor and other goods or services supplied by the Company or its Nominated Suppliers shall be paid for either before or after delivery or collection or supply in cash or by such other method of payment as may be stipulated by the Company without prejudice to the Company's right to require resumption of payment by direct debit when the default is corrected; and

5.3.4 to inform the Company in writing periodically as required by the Company of all the Tenant's purchases of Liquor from sources other than the Company and its Nominated Suppliers which are intended for resale on the Premises for the purpose of monitoring the implementation of the Business Plan and the trading potential of the Premises.

5.4 The Company may at any time by notice in writing to the Tenant change the brand or denomination of any or all of the designated Beers and/or the designated Liquors (including (for the avoidance of doubt) the Principal Products).

## 6 **Monitoring of Tenant's obligations**

To enable the Company to ensure that the Tenant is fulfilling its obligations under paragraph 4 of this Part 1 of this Schedule:

6.1 the Company may at its discretion take appropriate action including the removal of products for testing (on payment of the equivalent gross wholesale value of the product removed) and/or the installation of cellar and beer of monitoring equipment and the Tenant will pay the cost of electricity consumed by such cellar and beer monitoring equipment; and

6.2 the Tenant will permit the Company (or its agents or any person authorised by the Company) to enter the Premises at any time (with or without equipment) to examine the products and casks, kegs and other vessels.

## 7 **Development courses or briefings**

At the request of the Company the Tenant will attend trade development and/or training courses or briefings at a location and for a period reasonably required by the Company such period not to exceed five days in each year and will do so at his own expense.

## 8 **Insurance**

At all times during the Term the Tenant shall at his own cost insure and keep insured with an insurance company approved by the Company:

- 8.1 the Tenant's Inventory and the Tenant's stock in trade and other trade goods on the Premises and the Tenant's own private domestic furniture and household effects therein in the full replacement cost thereof against the Insured Risks and such other risks as the Company may require;
- 8.2 against all third party public and products liability risks including liability for loss of or damage to customer's effects and cars or other vehicles on or from any part of the Premises to an extent approved by the Company but in any event in a minimum sum of two million pounds;
- 8.3 against all employer's liability;
- 8.4 against loss of trading profits in case of damage by fire or other damage to the Premises affecting normal trading and against loss of business money whether at the Premises or in transit to the bank or elsewhere; and
- 8.5 against such other losses in such sums and against such other risks as the Company shall from time to time reasonably require.

## 9 **Company's covenant**

Not to do any act or thing whereby the Premises Licence may be forfeited or endangered and to take such actions as may be requisite to preserve its continued existence.

## **Part 2 Licensing obligations**

- 1 The Tenant shall:
  - 1.1 not purport to make any application in respect of the Premises Licence;
  - 1.2 conduct the Business at the Premises in an orderly manner and not do any act or thing whereby the Personal Licence and/or the Premises Licence may be forfeited or endangered or suspended and/or so as to lead to restrictive conditions being applied:

- 1.3 fulfil perform and observe any lawful regulations as to the conduct of licensed premises from time to time made by the Relevant Authority;
- 1.4 not do on the Premises or elsewhere anything whereby the Tenant may become liable to conviction before a court of summary jurisdiction or otherwise of any Relevant Offence.
- 1.5 give immediately notice by recorded delivery post to the Company:
  - 1.5.1 of any complaint or warning given by the Police or Office of Excise or by or on behalf of the Relevant Authority in respect of the conduct of the licensed business at the Premises and of any summons issued against the Tenant in respect of the Tenant's conduct as a Personal Licence holder or in relation to any Relevant Offence;
  - 1.5.2 of any complaint or warning given by the Relevant Authority or by an officer of the appropriate local authority touching or concerning the standard of hygiene in or about the Premises or otherwise;
  - 1.5.3 of any person having been to the Tenant's knowledge convicted of any offence committed upon the Premises or having been apprehended on a charge of committing any such offence or having been served with any summons in respect of any such offence; and/or
  - 1.5.4 of any application for a review of the Premises Licence made under the provisions of the Licensing Act 2003;  
  
and shall in every case take such steps as the Company may reasonably require in relation thereto.
- 1.6 The Tenant shall:
  - 1.6.1 nominate a suitably qualified holder of a personal licence to be the Designated Premises Supervisor (DPS) in respect of the premises licence as defined in section 15 Licensing Act 2003;
  - 1.6.2 procure the written consent of the proposed DPS in statutory format and deliver the same to the Company to enable an application to be made to vary the DPS;
  - 1.6.3 not to sell alcohol at the premises when there is no DPS for the premises licence;

- 1.6.4 immediately notify the Company if the DPS no longer wishes to hold that position or leaves the premises on a permanent basis; and
- 1.6.5 immediately notify the Company if the DPS or any other person employed at the premises is under investigation or in receipt of any caution or notification of criminal proceedings including a fixed penalty notice under the Licensing Act 2003.
- 1.7 The Company shall not (by its act or omission) allow the Premises Licence to lapse or acquiesce in its removal from the Premises.

### **Part 3**

#### **Service Retailing Standards**

The Standards detailed in this Part of this Schedule 3 are those which the Company considers essential for the Tenant to apply to the conduct of the Business in order to attract serve and retain customers.

#### **1 The Building and external areas**

##### **1.1 Building**

The buildings and its attachments must be maintained free of defects particularly with regard to public safety and defects reported or attended to according to responsibility. Ground floor walls, paintwork and all windows must be kept clean and in good order and regularly washed down as necessary.

##### **1.2 Forecourts car parks and other external areas**

These must be kept clean, tidy and free of rubbish and obstructions. Refuse and empty containers must be collected and stored in an organised manner and wherever possible in an area out of direct public view and regularly cleared away to prevent accumulation thereof.

### 1.3 **Garden areas**

Gardens, hedges, flowerbeds, floral displays and grassed areas must be regularly attended to and contribute to an overall favourable public impression. Where space permits garden seating, tables, umbrellas and garden equipment should be provided to meet normal seasonal demand and maintained in a clean and safe condition. All flower boxes, hanging baskets and tubs must be kept tidy and properly planted.

### 1.4 **General impression**

The exterior of the Premises must project a welcoming appearance and reflect a concern for cleanliness and order.

### 1.5 **Illuminations**

All illuminated signs, floodlighting apparatus and other lights must be maintained in good working order and switched on within trading hours during lighting-up times.

### 1.6 **Signing**

All signs including the house identification signs, directional signs, sales promotion signs, signs, advertising services provided and signs marking entrances/exits, lavatories and other facilities must be maintained in working order and in a clean condition and any defects reported to the Company. Promotional material must be removed as soon as it becomes out of date.

## 2 **Bars and other public areas**

### 2.1 **Cleanliness**

Furnishings, decorations, floor coverings, light fittings, curtains, tables and seating must be kept clean and in good condition. All paintwork, tiling and other washable surfaces must be washed down as necessary to maintain them in a clean state.

### 2.2 **General**

All statutory and other notices required by the Company to be displayed must be visible to the public and/or to staff as appropriate.

### 2.3 **Hygiene**

All animals must be excluded at all times from behind the bar counters from food preparation and storage areas and save for guide dogs from any other areas where their presence is likely to cause discomfort or annoyance to the public. Food hygiene regulations must be observed and food displays adequately protected and smoking in service and preparation areas prohibited.

### 2.4 **Lavatories**

These should be kept scrupulously clean and free from unpleasant odours and graffiti.

### 2.5 **Presentation**

The bars and all their fittings must present an attractive and orderly appearance. Goods for sale must be clearly priced and attractively merchandised the latter particularly in respect of food service. Draught beer dispense point counter hats must be kept clean and illuminated during opening hours.

### 2.6 **Amusement Machines**

Cabinets must be kept to a high standard of presentation and free from graffiti. Any cabinet not complying with this requirement must be replaced immediately.

## 3 **Customer service**

All apparatus, utensils and equipment for the preparation, storage, service, supply and consumption of Beer and Liquor and other non-alcoholic refreshments and food and for the supply of other goods and services to customers must be put and kept in a clean and safe condition and good working order and in accordance with written guidelines (if any) supplied by the Company in respect thereof.

## 4 **Staff**

### 4.1 **Numbers**

Adequate numbers of staff must be provided to cover normal daily and seasonal trading requirements to maintain standards of cleanliness and the Service Retailing Standards and to ensure that bars are kept fully stocked. Staff must contribute positively to the good image of the house and be clean and well presented and observe hygiene regulations and standards.

## 4.2 **Staff training**

The Tenant is responsible for ensuring that staff are suitably trained as necessary to:

- (a) understand and be capable of implementing the Service Retailing Standards;
- (b) be aware of regulations concerning licensing hours, under-age drinking, excessive drinking, hygiene and safety and manage problems of this kind in a polite form and discreet manner; and
- (c) meet product, dispense and service standards and any tasks relating to cash handling, food preparation, storage display and service and stock rotation and presentation set by the Tenant in accordance with this Agreement.

## 5 **Quality control**

### 5.1 **Preparation service and storage areas (including cellars)**

All preparation service and storage areas, surfaces, plant, equipment and utensils must be kept scrupulously clean and hygienic and free from rubbish at all times. All post mix dispense equipment and pipes for all products must be regularly, frequently and thoroughly cleaned and maintained in good condition and in accordance with written guidelines (if any) supplied by the Company. Safety and hygiene regulations and the display of prescribed notices must be observed. Beer raising and serving equipment may only be replaced, repaired or serviced by the Company or its approved agents and the cost thereof shall be borne by the Company or the Tenant in accordance with the responsibilities laid down by the Company. For the avoidance of damage to the beer lines the cleaning materials used in connection with beer dispense equipment must be those from time to time approved by the Company and at the correct strength. The Company reserves the right to charge for beer lines damaged by the use of cleaning materials at too high a concentration and/or non-approved cleaning materials.

### 5.2 **Kitchen areas**

All kitchen areas must be kept scrupulously clean and hygienic and free from rubbish at all times. All kitchen and catering equipment and fixtures and fittings

associated therewith (including hoods and fans and ducting) must be kept clean and in good working order and filters replaced as necessary.

### 5.3 **Product quality**

Draught cask, container bottled and canned beer must be stocked within their prescribed shelf-life and stock rotated correctly and stacked in a safe and orderly fashion. Cask beer must be spiled and handled in the manner required by the Company. Rate of throughput is an important determinant of product quality. Where cask beer is installed the minimum throughput is normally two casks per week and where container beer is installed the minimum throughput is normally one container per week. Other rules and guidelines on cellar management and product quality control are contained in the written instructions supplied by the Company.

### 5.4 **Food**

The standards already defined for drinks products must be met as must hygiene, cleanliness, staff service and storage standards.

## 6 **Letting accommodation**

6.1 Procedures for letting bedrooms (if any) should be adequate to ensure that bedrooms booked are available when required by the customer and a receipted account is provided. Room charges must be displayed and made known to the customer at the time rooms are let.

6.2 All fire exits must be clearly marked and appropriate room notices supplied. All fire fighting equipment must be supplied and maintained by a competent and qualified supplier to statutory levels.

## 7 **General**

All necessary steps must be taken to ensure the satisfactory outcome from an inspection of the Premises by an Environmental Health Officer or the Relevant Authority.

**Part 4**

**Section 1**

**List of designated Beers (including cider) and designated Liquors**

**Designated Beers**

Type	Sub-type (in whatever manner fermented and conditioned and whether in draught or packaged form).
Ale	Light Bitter or Pale Ale Export or Premium Ale Mild Ale Brown Ale Strong Ale (including Barley Wine)
Lager	Lager Export or Premium Lager (including Malt Lager or Malt Liquor) Strong Lager Diat Pils (or premium low carbohydrate beer or lager)
Stout	Bitter Stout or Porter Sweet Stout
Cider	
Wheat Beer	
Fruit Beer	
Low Carbohydrate including "Lite" Beer or Lager	
Low Alcohol and de-alcoholised or alcohol free beer or lager	

**Notes**

- 1 The brands or lines manufactured or factored by the Company within the types of Beer listed above and which are available for supply under this Agreement are those listed in the Company's current standard trade price lists.
- 2 Where a brand or line manufactured or factored by the Company is listed in the Company's current standard trade price lists as being available for supply as a type of Beer specified above the Tenant may not purchase other brands or lines of the same type from other sources.

## Designated Liquors

Premium Packaged Spirit  
Flavoured Alcoholic Beverages  
Perry

### Notes

- 3 An example of a Premium Packaged Spirit is "Smirnoff Ice".
- 4 An example of a flavoured Alcoholic Beverage is "Reef".

**Section 2**  
**List of Liquors**

Type (whether in draught or packaged form)	As defined further in the numbered footnotes. Note 14 applies to all types.
Grape Wine	(1), (2), (3), (4)
Fruit Wine	(5)
Ginger Wine	
Sherry	(6), (7)
Montilla	(7)
Port	(2)
Madeira	(8), (9)
Marsala	
Vermouth	(1), (2)
Whisky	(10)
Gin	
Vodka	
Brandy	
Rum	(11)
Pastis	
Tequila	
Perry	(2), (3)
Cola	(12), (13)
Tonic	(12), (13)
Ginger Ale	(12), (13)
Ginger Beer	(12), (13)
Lemonade	(3), (12), (13)
Bitter Lemon	(12), (13)
Bottled Water	(3)
Soda Water	(12)
Aperitifs and aromatised wines (other than vermouths).	
Bitters and Cups	
Cocktails	
Mixtures of different alcoholic beverages and mixtures of alcoholic and non-alcoholic beverages.	
Fruit based and vegetable-based soft drinks (other than Lemonade and Bitter Lemon).	
Liqueurs including cream liqueurs and alcoholic cordials	
Shandy	
Squash and cordials.	
Fruit juices	

- (1) Red, white and rose types
- (2) Dry, medium and sweet types
- (3) Still and sparkling types
- (4) Includes British made wine of these types and dilutes made from concentrates
- (5) Different types based on different fruits
- (6) Includes similar wines labelled as sherry with a special geographical prefix
- (7) Dry medium and cream types
- (8) Includes similar wines labelled as port with a special geographical prefix
- (9) Ruby-tawny and white types
- (10) Also spelt "Whiskey"
- (11) Light and dark types
- (12) Including concentrates
- (13) Regular and low calories types

## **Part 5**

### **List of Principal Products to be stocked**

McMullen AK  
McMullen Country Best Bitter  
McMullen Special Reserve Seasonal Ales  
Fosters Draught Lager  
Stella Artois Draught Lager  
Draught Guinness  
Bulmers Strongbow Cider  
Worthington Creamflow  
Kronenbourg 1664

McMullen No. 1 bottle

**Note:** In addition to the above all bottled and packaged products will be included as listed in the Current Licensees Price List.

The Common Seal of **MCMULLEN & SONS** )  
**LIMITED** was hereunto affixed in the )  
presence of: )

Director

Director/Secretary

EXECUTED as a Deed by

*[Full name of the Tenant]*

in the presence of:

Witness Signature

Witness Name

Witness Address

Witness Occupation

**DATED**

**2009**

**McMULLEN & SONS, LIMITED**

**and**

**BUSINESS AND TENANCY AGREEMENT**

in respect of

\*berwin leighton paisner

Adelaide House London Bridge London EC4R 9HA  
tel +44 (0)20 7760 1000 fax +44 (0)20 7760 1111

## PARTICULARS

- 1 *Premises*  
as identified on attached plan;
- 2 *Appurtenant Rights*  
the rights benefiting the Premises specified in the Memorandum (if any) annexed;
- 3 *Matters*  
the matters to which the Property is subject specified in the Memorandum (if any) annexed;
- 4 *Date of Commencement*
- 5 *Term of this Agreement*  
six years from the Date of Commencement (but determinable as provided in this Agreement);
- 6 *Initial Annual Rent*  
at the rate of £[ ] per annum;
- 7 *Percentage*  
the percentage representing the trading opportunity at the Premises being [•]% (referred to in clause 4.2);
- 8 *Initial Deposit*  
£5,000
- 9 *Terminal decorating costs payment*  
payment at the rate of £80 per month (as referred to in paragraph 2.2.1 of Schedule 2 Part 1);
- 10 *Core Trading Hours*  
between the hours of 12 noon - 2.30 and 5pm - 11pm on Monday to Saturday (inclusive) and between the hours of 12 noon - 3pm and 7pm - 10.30pm on Sunday (but subject to alteration as the Company may from time to time stipulate);